

Fresno, California

March 22, 2012

The City Council met in regular session at the hour of 8:30 a.m. in the Council Chamber, City Hall, on the day above written.

Present:	Oliver Baines III	Councilmember
	Andreas Borgeas	Councilmember
	Lee Brand	Councilmember
	Sal Quintero	Councilmember
	Blong Xiong	Acting Council President
	Clinton Olivier	Council President
Absent:	Larry Westerlund	Councilmember (Military duty)

Mark Scott, City Manager
Bruce Rudd, Assistant City Manager
Jim Sanchez, City Attorney
Yvonne Spence, City Clerk
Yolanda Salazar, Assistant City Clerk

Tom Sims of Baptist Temple gave the invocation and President Olivier led the Pledge of Allegiance.

PROCLAMATION OF “EDDIE CABRAL, ERIC VELARDE AND RONNIE WATTS DAY” – COUNCILMEMBER QUINTERO

Read and presented.

PRESENTATION FROM THE FRESNO-KOCHI SISTER CITIES COMMITTEE – ACTING PRESIDENT XIONG

Presentation made.

PRESENTATION BY THE FRESNO CHAMBER OF COMMERCE ON THEIR SMALL BUSINESS BILL OF RIGHTS – PRESIDENT OLIVIER

Presentation made.

PROCLAMATION OF “NATIONAL SAFE PLACE WEEK” – COUNCILMEMBER BAINES

Read and presented.

PROCLAMATION OF “10TH ANNIVERSARY OF WEST FRESNO HEALTH CARE COALITION, INC.,” – MAYOR’S OFFICE

Read and presented **(2 – 0)**.

APPROVE MINUTES OF MARCH 8, 2012:

On motion of Acting President Xiong, seconded by Councilmember Quintero, duly carried, RESOLVED, the City Council minutes of March 8, 2012, approved as submitted.

President Olivier advised Councilmember Westerlund was on military duty.

COUNCIL MEMBER REPORTS AND COMMENTS:

Councilmember Quintero (1) spoke to a recent TV news story about the new City program to cement streetlight boxes to prevent copper wire theft and stated what was not reported was Councilmember Brand was the one who found the money for the program and thanked him stating he made all of Council look good; and (2) on behalf of a couple of longtime E. Lorena Avenue senior residents thanked public works crews for the sidewalk work/repairs constructed stating that made the residents very happy.

President Olivier referenced the issue going on in the community with the CCSPCA (SPCA) and stated he perceived the SPCA's relationship with the City to be a very serious problem and it was his intent to bring forth an item next week for public discussion; distributed to Council a complaint letter he received about the SPCA from Mr. and Mrs. Green and a copy of the city's contract with the SPCA in preparation for discussion next week; spoke to the Green's letter about one of their cats being killed by two pit bulls and calls that were made to the police and the SPCA; and presented questions and additional comments relative to the performance of the SPCA, contract obligations, if the City has ever received copies of complaint reports as required, his meeting with some members of the SPCA board, if the SPCA ever contacted the Greens as promised, the closed Board meetings, taxpayer dollars allocated to the SPCA, if the SPCA was mandated to comply with the Brown Act, if the SPCA operated as a pseudo public agency/enforcement arm of city government, if the City had an argument to make to request the SPCA to open their meetings to the public, the Board's argument that they do not operate as a pseudo government agency and do not have to open their meetings, and request that staff meet with the SPCA director before next week's discussion and provide options besides contracting with the SPCA, with ACM Rudd, Mr. Green and City Attorney Sanchez responding throughout. Councilmember Borgeas requested consideration be given to a City appointee and a County appointee to the SPCA Board as options are explored due to the serious dollars being invested into this service, with Mr. Rudd responding.

Councilmember Borgeas advised of complaints he has received from constituents about a sewer pipeline project off of Bullard Avenue where paving was being done only over the area that was dug up and not from curb to curb, and elaborated further on the issue. ACM Rudd addressed issues/questions relative to why projects are done that way and why public utility enterprise funds could not be used to reconstruct the entire roadway, and stated he would consult with Public Works Director Wiemiller on what options were available.

Councilmember Brand spoke briefly to the CCSPCA issue and cautioned against taking a knee-jerk reaction stating there was a lot to address, Fresno County was involved, the contract was up for renewal in June, and careful thought was needed with engagement of all involved parties to find some good solutions.

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APPROVE AGENDA:

(1-H) APPROVE THE FILING OF NOTICE OF INTENT TO ADOPT MITIGATED NEGATIVE DECLARATION EA-11-008 BY THE CITY OF FRESNO, FOR THE WIDENING AND PLACEMENT OF ASSOCIATED FRONTAGE IMPROVEMENTS ALONG THE SOUTH SIDE OF NEES AVENUE AND THE WEST SIDE OF WILLOW, SOUTHWEST CORNER OF THE NEES AND WILLOW INTERSECTION IN THE COUNTY OF FRESNO

#1 APPROVE ACQUISITION OF A PUBLIC STREET EASEMENT FROM A PORTION OF PROPERTY OWNED BY KYLE KIRCHER AND KRISTIN KIRCHER AT 7819 N. WILLOW AVENUE IN THE AMOUNT OF \$103,000 THAT IS NECESSARY FOR THE NEES/WILLOW PROJECT, AND AUTHORIZE THE PUBLIC WORKS DIRECTOR, OR DESIGNEE, TO SIGN ALL DOCUMENTS NECESSARY TO COMPLETE THE TRANSACTION

~AND~

(1-I) APPROVE THE FILING OF NOTICE OF INTENT TO ADOPT MITIGATED NEGATIVE DECLARATION EA-11-008 BY THE CITY OF FRESNO, FOR THE WIDENING AND PLACEMENT OF ASSOCIATED FRONTAGE IMPROVEMENTS ALONG THE SOUTH SIDE OF NEES AVENUE AND THE WEST SIDE OF WILLOW AVENUE, SOUTHWEST CORNER OF THE NEES/WILLOW INTERSECTION IN THE COUNTY OF FRESNO

#1 APPROVE ACQUISITION OF A PUBLIC STREET EASEMENT FROM A PORTION OF PROPERTY OWNED BY THE DONALD L. LACEFIELD AND KIMBERLY A. LACEFIELD FAMILY TRUST DATED 11/19/03, AT 7835 N. WILLOW AVENUE IN THE AMOUNT OF \$89,900 THAT IS NECESSARY FOR THE NEES/WILLOW PROJECT, AND AUTHORIZE THE PUBLIC WORKS DIRECTOR, OR DESIGNEE, TO SIGN ALL DOCUMENTS NECESSARY TO COMPLETE THE TRANSACTION

The above Items **1-H** and **1-I** were removed from the agenda, to be rescheduled.

(9:00 a.m. 'A') RESOLUTION - 509TH AMENDMENT TO MFS RES. 80-420 (PARKS SECTION) INCREASING GREEN FEES AT RIVERSIDE GOLF COURSE

Laid over to one week to March 29, 2012.

On motion of Councilmember Brand, seconded by Councilmember Baines, duly carried, RESOLVED, the **AGENDA** hereby approved, as amended, by the following vote:

Ayes	:	Baines, Borgeas, Brand, Quintero, Xiong Olivier
Noes	:	None
Absent	:	Westerlund

ADOPT CONSENT CALENDAR:

Barbara Hunt, 2475 S. Walnut, spoke to Item **1-A** funding, expressed concern and spoke in opposition to Item **1-B**, and spoke to the three Homeland Security items (**1-E, F and G**).

Councilmember Brand pulled Item **1-B** for separate discussion/action.

Acting President Xiong stated he did not want to pull the items and upon his question ACM Rudd explained Items **1-E, 1-F** and **1-G** were all Homeland Security grants but they were for different aspects within grant program categories.

(1-A) RESOLUTION NO. 2012-38 - 58TH AMENDMENT TO AAR 2011-133 APPROPRIATING \$25,000 FROM THE BETHEL & MOORE FOUNDATIONS INTO THE PARCS DEPARTMENT BUDGET TO CONTINUE THE COMMUNITY SCIENCE PROGRAM AT GRANNY'S CENTER

(1-C) RESOLUTION NO. 2011-39 - 45TH AMENDMENT TO AAR 2011-133 APPROPRIATING \$14,500 IN DEVELOPER CONTRIBUTIONS FOR THE ACQUISITION OF RIGHT-OF-WAY FOR TRACT NO. 5352, PROPERTY LOCATED SOUTH OF SHAW AND WEST OF BRYAN AVENUES

(1-D) APPROVE APPLICATION FOR AND ACCEPTANCE OF A GRANT AWARD FOR \$165,000 FROM THE U.S. DEPARTMENT OF HOMELAND SECURITY ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM, AND AUTHORIZE THE FIRE CHIEF TO COMPLETE ALL REQUIRED DOCUMENTS

#1 RESOLUTION NO. 2012-40 - AUTHORIZING THE APPLICATION FOR AND ACCEPTANCE OF FISCAL YEAR 2011 CYCLE U.S. DEPARTMENT OF HOMELAND SECURITY ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM FUNDS AND AUTHORIZING COMPLETION OF DOCUMENTS

#2 RESOLUTION NO. 2012-41 - 53RD AMENDMENT TO AAR 2011-133 APPROPRIATING \$132,000 OF THE GRANT FUNDS TO THE FIRE DEPARTMENT TO PROVIDE PERSONAL PROTECTIVE EQUIPMENT

(1-E) APPROVE APPLICATION FOR AND ACCEPTANCE OF A GRANT AWARD FOR \$101,120 FROM THE U.S. DEPARTMENT OF HOMELAND SECURITY ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM, AND AUTHORIZE THE FIRE CHIEF TO COMPLETE ALL REQUIRED DOCUMENTS

#1 RESOLUTION NO. 2012-42 - AUTHORIZING THE APPLICATION FOR AND ACCEPTANCE OF FISCAL YEAR 2011 CYCLE U.S. DEPARTMENT OF HOMELAND SECURITY ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM FUNDS AND AUTHORIZING COMPLETION OF DOCUMENTS

#2 RESOLUTION NO. 2012-43 - 54TH AMENDMENT TO AAR 2011-133 APPROPRIATING \$80,900 OF THE GRANT FUNDS TO THE FIRE DEPARTMENT TO PROVIDE IN-MASK RADIO COMMUNICATIONS EQUIPMENT

(1-F) APPROVE APPLICATION FOR AND ACCEPTANCE OF A GRANT AWARD FOR \$273,300 FROM THE METROPOLITAN MEDICAL RESPONSE SYSTEM ("MMRS") GRANT PROGRAM, THROUGH THE COUNTY OF FRESNO, AND AUTHORIZE THE FIRE CHIEF TO COMPLETE ALL REQUIRED DOCUMENTS

#1 RESOLUTION NO. 2012-44 - AUTHORIZING THE APPLICATION FOR AND ACCEPTANCE OF FISCAL YEAR 2011 CYCLE U.S. DEPARTMENT OF HOMELAND SECURITY/OFFICE OF DOMESTIC PREPAREDNESS "MMRS" GRANT PROGRAM FUNDING, AND AUTHORIZING COMPLETION OF DOCUMENTS

#2 RESOLUTION NO. 2012-45 - 52ND AMENDMENT TO AAR 2011-133 APPROPRIATING \$273,300 TO THE FIRE DEPARTMENT TO PROVIDE TRAINING, EQUIPMENT, MEDICAL SUPPLIES AND CONTINUING PROGRAM OVERSIGHT

(1-G) APPROVE APPLICATION FOR AND ACCEPTANCE OF A GRANT AWARD FOR \$198,700 FROM THE STATE HOMELAND SECURITY GRANT PROGRAM, THROUGH THE COUNTY OF FRESNO, AND AUTHORIZE THE FIRE CHIEF TO COMPLETE ALL REQUIRED DOCUMENTS

#1 RESOLUTION NO. 2012-46 - AUTHORIZING THE APPLICATION FOR AND ACCEPTANCE OF FY 2011 CYCLE U.S. DEPARTMENT OF HOMELAND SECURITY/OFFICE OF DOMESTIC PREPAREDNESS STATE HOMELAND SECURITY FUNDING, AND AUTHORIZING COMPLETION OF DOCUMENTS

#2 RESOLUTION NO. 2012-47 - 51ST AMENDMENT TO AAR 2011-133 APPROPRIATING \$198,700 TO THE FIRE DEPARTMENT TO PROVIDE TRAINING AND EQUIPMENT

On motion of Councilmember Brand, seconded by Councilmember Quintero, duly carried, **RESOLVED**, the above entitled **CONSENT CALENDAR** hereby adopted, by the following vote:

Ayes : Baines, Borgeas, Brand, Quintero, Xiong, Olivier
Noes : None
Absent : Westerlund

CONTESTED CONSENT CALENDAR:

(1-B) RESOLUTION NO. 2012-48 - 59TH AMENDMENT TO AAR 2011-133 APPROPRIATING \$304,400 FROM THE RISK REIMBURSEMENT FUND TO THE PUBLIC WORKS STREET MAINTENANCE DIVISION/STREETLIGHT SECTION TO REPLACE STOLEN COPPER WIRE

Upon questions of Councilmember Brand Assistant Public Works Director Krauter and Street Maintenance Manager Russell addressed the \$304,400 cost for the 216 locations, confirmed \$450 per box was the running average over the past two or three years, and advised over the last three months the average cost per location was \$750. Councilmember Brand elaborated further on the program, the preemptive encasement option, efficiencies, success of the program, program cost/funding, and turning the preemptive crew into repairs in the future.

On motion of Councilmember Brand, seconded by Councilmember Quintero, duly carried, **RESOLVED**, the above entitled Resolution No. 2012-48 hereby adopted, by the following vote:

Ayes : Baines, Borgeas, Brand, Quintero, Xiong, Olivier
Noes : None
Absent : Westerlund

(9:00 a.m. 'B') RESOLUTION NO. 2012-49 - DECLARING AN URGENT NECESSITY FOR THE PRESERVATION OF LIFE, HEALTH OR PROPERTY, WAIVING COMPETITIVE PROCUREMENT REQUIREMENTS, AND AUTHORIZING THE DIRECTOR OF AVIATION TO NEGOTIATE A CONTRACT WITH TEICHERT CONSTRUCTION IN AN AMOUNT NOT TO EXCEED \$250,000 FOR THE REPAIR OF TAXIWAY 'C' AT FRESNO YOSEMITE INTERNATIONAL (FYI) AIRPORT

Aviation Director Widmar reviewed the issue and recommended approval, all as contained in the staff report as submitted.

Barbara Hunt, 2475 S. Walnut, spoke to the FYI name and to concerns with the project and funding **(3 – 0)**.

On motion of Councilmember Quintero, seconded by President Olivier, duly carried, **RESOLVED**, the above entitled Resolution No. 2012-49 hereby adopted, by the following vote:

Ayes : Baines, Borgeas, Brand, Quintero, Xiong, Olivier
Noes : None
Absent : Westerlund

The City Council recessed at 10:11 a.m. and as the City Successor Agency for the RDA convened in joint session with the Fresno Revitalization Corporation (FRC).

(9:15 a.m. 'A') JOINT MEETING OF THE CITY AS SUCCESSOR HOUSING AGENCY FOR THE REDEVELOPMENT AGENCY (RDA) AND THE FRESNO REVITALIZATION CORPORATION (FRC)

(‘A’) APPROVE A PURCHASE OPTION AGREEMENT (POA) BETWEEN THE SUCCESSOR HOUSING AGENCY FOR THE RDA AND AMCAL MULTI-HOUSING, INC., A CALIFORNIA CORPORATION (DEVELOPER), FOR A PARCEL LOCATED AT 3702 E. VENTURA TO CONVEY THE PROPERTY AND FACILITATE THE DEVELOPMENT OF A MIXED-USE AFFORDABLE SENIOR APARTMENT PROJECT

Executive Director Murphey advised this project was being done in conjunction with the City of Fresno and Craig Smith with AMCAL and HCD Manager Cazares were present to answer any questions. Project Manager Perez reviewed the issue and recommended approval, all as contained in the staff report as submitted.

Barbara Hunt spoke to the issue and expressed various concerns.

Councilmember/FRC Board Member Quintero stated this was going to be a nice project and would benefit the area and upon his questions Ms. Perez stated the project started back in 2005 and there would be 51 units in the first phase and 3,000 square feet of commercial. A motion and second was made to approve staff's recommendation. Upon question of Councilmember/FRC Member Brand Ms. Perez clarified the Successor Agency was purchasing a 0.29 acre parcel and the City owned the remaining portion.

On motion of Councilmember/FRC Member Quintero, seconded by Councilmember/FRC Member Brand, duly carried, RESOLVED, the above entitled POA between the City of Fresno as the Successor Housing Agency to the RDA and AMCAL Multi-Housing, Inc., hereby approved, by the following votes:

SUCCESSOR AGENCY VOTE:

Ayes : Baines, Borgeas, Brand, Quintero, Xiong, Olivier
Noes : None
Absent : Westerlund

FRC VOTE:

Ayes : Borgeas, Brand, Olivier, Quintero, Swearengin, Xiong, Baines
Noes : None
Absent : Westerlund

(‘B’) JOINT RESOLUTION NO. SA-2/FRC-4 - AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND

Executive Director Murphey reviewed the issue and recommended approval, all as contained in the staff report as submitted. FRC Board Member Swearengin and Councilmember Borgeas left the meeting at 10:20 a.m.

Barbara Hunt spoke in support.

On motion of Council President/FRC Member Olivier, seconded by Councilmember/FRC Chair Baines, duly carried, RESOLVED, the above entitled Joint Resolution No. SA-2/FRC-4 hereby adopted, by the following votes:

SUCCESSOR AGENCY VOTE:

Ayes : Baines, Brand, Quintero, Xiong, Olivier
Noes : None
Absent : Borgeas, Westerlund

FRC VOTE:

Ayes : Brand, Olivier, Quintero, Xiong, Baines
Noes : None
Absent : Borgeas, Swearengin, Westerlund

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The joint bodies adjourned their meeting at 10:22 a.m. and the City Council reconvened in regular session.

(10:00 A.M.) CONTINUED HEARING TO CONSIDER THE FORMATION OF A SPECIAL TAX DISTRICT – COMMUNITY FACILITIES DISTRICT (CFD) NO. 16 – FOR THE MAINTENANCE OF CERTAIN PUBLIC IMPROVEMENTS ASSOCIATED WITH THE UNIVERSALLY ACCESSIBLE PARK

a) RESOLUTION NO. 2012-50 - RESOLUTION OF FORMATION, ESTABLISHING A SPECIAL TAX DISTRICT (CFD NO. 16) FOR THE MAINTENANCE OF CERTAIN PUBLIC IMPROVEMENTS ASSOCIATED WITH THE UNIVERSALLY ACCESSIBLE PARK, DETERMINING THE VALIDITY OF PRIOR PROCEEDINGS, AND TAKING RELATED ACTIONS

b) RESOLUTION NO. 2012-51 - CALLING A SPECIAL MAILED-BALLOT ELECTION AND SETTING MAY 21, 2012, AS THE ELECTION DAY

President Olivier announced the time had arrived to consider the issue and opened the hearing.

City Engineer Mozier reviewed the issue as contained in the staff report, advised of and explained two minor changes relative to the rate method of apportionment and tax calculation, and recommended approval.

Speaking to the issue were: Mary Savala, League of Women Voters, 1345 Bulldog Lane, who spoke to timing concerns and voter confusion with this election overlapping with the receipt of voter ballots from the California primary election, and requested the mailing of these ballots be delayed until after the primary election; Brandi Orth, County Clerk/Registrar of Voters, timing concern, voter confusion with the June 5th Presidential election, request mailing of these ballots be delayed until after the primary election or city staff coordinate with her office on color of materials if this item goes forward; Barbara Hunt, various concerns/election issues; Sherry Smith, 4724 W. Swift, support for the district park and concern with taxing a singular area and impact on area residents; and Bob Hand, Executive Director of Resources for Independence Central Valley, 3008 N. Fresno Street, who spoke in support of the issue and to the MOU, fundraising, and the need to move forward this date.

Councilmember Borgeas returned to the meeting at 10:33 a.m.

Upon call, no one else wished to be heard and President Olivier closed the public hearing.

Acting President Xiong thanked staff, ACM Rudd and Central Unified Trustees for all their hard work, participation and involvement; upon his request Mr. Rudd responded to speaker comments on timing and election concerns; elaborated on the need to move forward this date due to funding and grant timeline, to community outreach efforts and importance of getting the message out to residents, and to how the tax funds would be used solely for the park with community oversight; and made a motion to approve staff's recommendation. Councilmember Baines seconded the motion and upon his questions Mr. Rudd confirmed there were grant and city budget timing issues here and advised a citywide/countywide park initiative was attempted 3 or 4 years ago and it failed, elaborating on both issues. Councilmember Baines stated he felt at some point there needed to be more thought on how park maintenance will be provided, he did not know if CFDs all over the city would be the model and if the unintended consequences of that had been fully explored, and spoke to the need for staff to coordinate with the County Clerk's office on election materials as requested.

On motion of Acting President Xiong, seconded by Councilmember Baines, duly carried, RESOLVED, the above entitled Resolution Nos. 2012-50 and 2012-51 hereby adopted, by the following vote:

Ayes	:	Baines, Brand, Quintero, Xiong, Olivier
Noes	:	Borgeas
Absent	:	Westerlund

UNSCHEDULED ORAL COMMUNICATION:

Barbara Hunt, 2475 S. Walnut, spoke to and expressed concerns with funding for capital improvement projects and the lack of funds for government.

(10:15 A.M.) CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL:

(‘A’) EXISTING LITIGATION – CASE NAMES:

#1 DENNIS GARRETT V. CITY OF FRESNO

#2 LA-KEBBIA WILSON V. CITY OF FRESNO, UNITED STATES EASTERN DISTRICT CASE NO. 09-CV-00887-LJO-SKO

The City Council met in closed session in Room 2125 at the hour of 10:55 a.m. to consider the above matters and recessed for lunch thereafter.

LUNCH RECESS – 11:20 A.M. - 1:30 P.M.

(1:30 P.M.) FISCAL SUSTAINABILITY POLICY AND BUDGET UPDATE – MAYOR AND CITY MANAGER OFFICES

Mayor Swearingin introduced the item and stated there was bad news but also some good news with the bad being the city’s ongoing financial distress and the good being this Fiscal Sustainable Policy which was a solid ten year recovery plan to navigate through the troubled waters and would also direct immediate actions, **(4 – 0)** and to recap where the City has been over the last 3½ years, where the city was today, and how to finish this fiscal year gave a PowerPoint presentation which consisted of Budget Balancing – Fiscal Year 2009 through 2012 (Expenses/Revenues), General Fund FY 2012 Adopted, Public Safety, General Fund FY 2012 Mid-Year, General Fund Projections, General Fund 5-Year Projections, and Options for Restoring Financial Sustainability. At this point City Manager Scott continued the PowerPoint presentation with a review of “Fiscal Sustainability Policy – A Ten Year Work Out Plan for the City of Fresno”, which he began with the FY 2012 Adopted General Fund slide, and consisted of Comparison to Other Large Cities, Credit Agency Downgrades, Other Fiscal Health Measures, What the Fiscal Sustainability Policy Contains, Fiscal Management Policy Framework, Labor Relations Policy Framework, and Recommended Action Steps.

Speaking to the issue were: Barbara Hunt, 2475 S. Walnut, concerns with capital improvement projects/comments on the City-County Master Agreement; Rocky Lucia, Attorney for FPOA, Pleasanthill, CA, comments on FPOA stepping up over the years **(5 – 0)** and on the need to comply with the Myers-Milias-Brown Act on Meet & Confer; Bill Trollinger, FPOA 1st Vice President, 994 N. Van Ness, concerns/issues with the labor relations policy; Kirk Wanless, President of the Firefighters Association, who questioned what the rush was and spoke to the need for time and meetings with employees to find common ground; Marina Magdaleno, 830 N. Fulton, Local 39 labor representative, concerns with labor relations policy/need for more review time; John Conlee, 2nd Vice President for FPOA, concerns with hand being tied/need for time to digest policy; Damon Kurtz, FPOA, policy concerns/vague and ambiguous/dictates the way things should be done/need for more review time; Richard Renteria, comments in support of FPOA/Fresno being one of the worst run cities/need for better communication, leadership and immediate action; and Joan LeRoux, 224 W. Cambridge, who spoke to the Zoo Master Plan requiring \$15 million worth of work in Roeding Park/concern with “pet projects” funding and funding source.

Councilmember Borgeas stated this was a very sobering but insightful presentation, not too much surprised him anymore, and he was glad this policy identifying long-term liabilities and recognizing short-term cash flow problems was being put forth by the administration, and presented questions and comments relative to FPOA Attorney Lucia’s comments/how this policy would violate a “meet and confer” requirement, Action No. 5/Page 15/City Manager to contact Labor and request “Meet and Confer”, if there had been any violation of any ‘M&C’ requirement or the Myers-Milias-Brown Act, core services and a fee-based system, how to address the upcoming \$15 million shortfall, the one leave day received for every four days worked, and the labor process/negotiations/what options would exist if no agreement is reached, and/city manager/mayor/council authority to impose changes, with Mr. Lucia, City Attorney Sanchez, and Mr. Scott responding throughout.

Councilmember Brand presented questions and comments at length relative to the risk management fund, revenue assumptions, various expenditure projections, pension costs, purchasing jail cells, the difficulty in making 5 and 10 year projections, Plan B, selling city assets, RDA debt and future funds, lack of new revenue streams, bond structure/refunding opportunities, if more time to evaluate the policy was a doable request, evaluating options being the issue at this time, the unprecedented times requiring a look at unprecedented actions, **(6 – 0)** the existing/upcoming shortfalls, negative fund balances and cash flow problems being a very serious financial gap/problem, worst case scenario/if the continuation of lack of employee concessions/unanticipated lawsuits/capital needs will result in a declaration of fiscal emergency, what would have to be proven for a fiscal emergency, legal

cost, credit rating factors, if a further credit downgrade and inability to meet payroll would put the City on the verge of bankruptcy, and bankruptcy being something no one wants and the point here being to find a solution, with Mr. Scott and Mr. Sanchez responding/clarifying issues throughout. No action was required and there was no further discussion.

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SCHEDULED COMMUNICATIONS:

APPEARANCE BY RONALD HOLLIGER REGARDING HIS CONCERN AND REQUEST COUNCIL TAKE ACTION TO PROHIBIT STORES FROM SELLING DRUG PARAPHERNALIA IN THE VIEW/PRESENCE OF CHILDREN

Appearance made, discussion ensued, and Mr. Hollinger was advised to meet with DARM staff.

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RECESS – 3:25 P.M. – 5:08 P.M.

(5:00 P.M.) HEARING TO CONSIDER AN APPEAL OF CONDITIONAL USE PERMIT (CUP) APPLICATION NO. C-11-028 (AND ENVIRONMENTAL FINDING) FILED BY LARRY MCKENRY OF ABC BROKERS, ON BEHALF OF APPLICANT ABDULLA MANSOUR NASR, PROPRIETOR OF ‘ZACK’S MARKET’, TO UP-GRADE A STATE OF CALIFORNIA ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE, PROPERTY LOCATED AT THE SOUTHWEST CORNER OF CALIFORNIA AVENUE AND MARTIN LUTHER KING, JR., BOULEVARD

a) ADOPT FINDING OF A CATEGORICAL EXEMPTION FOR E.A. NO. C-11-028 ISSUED MAY 31, 2011

b) **RESOLUTION** - DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION’S ACTION APPROVING CUP APPLICATION NO. C-11-028 FOR AN UP-GRADE OF A TYPE 20 ABC LICENSE (*OFF-SALE BEER & WINE*) TO A TYPE 21 ABC LICENSE (*OFF-SALE LIQUOR, BEER & WINE*), SUBJECT TO THE CONDITION THAT DEVELOPMENT SHALL COMPLY WITH THE DARM DEPARTMENT’S REVISED CONDITIONS OF APPROVAL DATED MARCH 22, 2012
(NOT ADOPTED)

President Olivier announced the time had arrived to consider the issue and opened the hearing.

Planner Van Patten noted the “red tag” packet of material was an added attachment to the staff report and the floor plan just submitted was received this date and was an updated floor plan, and gave a PowerPoint presentation on CUP Application No. C-11-028 which consisted of the Project Description, Vicinity Map, Aerial Photo of the Site, Background, Director’s Action and Appeal filed by H.E.A.T., Basis of Appeal and Staff Responses, Findings Required by the Fresno Municipal Code, Planning Commission Action and Appeal filed by Councilmember Baines, and Staff Recommendation.

Speaking to the issue were: Debbie Darden, 891 W. Kearney Boulevard, opposed to the CUP/request denial; Attorney Bruce Leichty representing the applicant, who corrected inaccurate statistics on ABC licenses in the census tract, clarified his client was a grocery store operator and not a liquor store operator, and spoke in support of the CUP and requested the appeal be denied; Harlan Kelly Sr., 3378 W. Kearney Blvd., business owner at 1329 B Street, opposed to the CUP; LaVera Williams, Panda’s Day Care, 2105 Martin Luther King Blvd., opposed; Andrea Smith, representing Youth Leadership Institute (YLI), 2440 Tulare Street, Ste. 200, opposed; Jasmine Castillo, Edison High School senior, opposed; Mary Jane Skiellerup, YLI, 2440 Tulare Street, opposed **(7 – 0)**; Hester Hensley, 1122 Martin, opposed; Avis Braggs, 219 E. Stanislaus, opposed; Robert Mitchell, 3349 E. Madison, opposed; Mary Curry, Chair of Concerned Citizens of West Fresno and member of the District 3 Advisory Committee, opposed; George Marcus III, shopping center owner, 840 E. California, support for the CUP; applicant representative Larry McKenry, 1136 E. Simpson, support for the CUP; Clara Cruz, representing Centro La Familia, opposed/submitted a petition containing signatures in opposition to the CUP, along with Rudy, who submitted written information and read a news story about the death of a father of six who was hit by a drunk driver; and Venise Curry, 312 W. Valencia, opposed.

Upon call, no one else wished to be heard and President Olivier closed the public hearing.

Councilmember Baines stated he appreciated how the planning commission arrives at land use issues, how the police department arrives at approval of ABC CUPs, and staff and the DARM department wanting to approve projects like this but stated none of those entities was charged with caring for and taking a holistic look at the communities that council members represent; stated his community had spoken out in opposition to this issue and advised he met with the applicant and asked him to speak directly to the community about their concerns but he has refused to do that; and upon his request Executive Director Murphey read excerpts

from the Keyser Marsten report prepared by the RDA a few years ago in its relationship to the finding of blight and crime in the area. Upon a further request and question of Councilmember Baines Deputy Police Chief Farmer advised of the crime statistics in the subject zone (Census Tract 9), and confirmed there was a nexus between crime and alcohol and added of the 388,632 calls for service citywide in 2011 7,263 incidents related to alcohol. Councilmember Baines commented further stating ABC was already on record stating this area fell under their definition of over-saturation of liquor stores, there were independent reports/analyses corroborating that, there were high incidences of crime as highlighted by the police department, stressed this was not the area to introduce another alcohol license, elaborated further on reasons to deny the CUP, and stated our community was asking for Council's help, requested Council not further degrade an area that has significant blight and crime, and made a motion to uphold the appeal and deny the CUP and urged Council's support.

Councilmember Brand seconded the motion and thanked everyone for their input, spoke to his experience on the planning commission and the similar actions in west Fresno, stated there was a direct correlation between alcohol sales, criminal activity and blight and the case could be made that this would not enhance the lifestyle of anyone in west Fresno, stated as a planning commissioner he had never seen a higher concentration of liquor licenses than in southeast and southwest Fresno and this concentration would not be found in northeast and northwest Fresno, and with all due respect to the business owner stated he was supporting Councilmember Baines as enough was enough.

Councilmember Quintero stated he knew the area well as he went to Mt. Carmel School where MLK school was now, spoke to when west Fresno was known as the *Golden Westside* and stated he saw the community wanting to bring that back and make it the *Golden Westside* again, and spoke to many of the old businesses in the area and the good times, stated times do change, and applauded the community for their fortitude and resilience (**8 – 0**) and stated he looked forward to having those good days again.

Acting President Xiong spoke to the issues of "NIMBY (Not in my Backyard) and a business owner; spoke to the area's statistics, code interpretations, and questioned -- if this policy body and the City believes in the statistics provided -- if a policy should be created for west Fresno (with community engagement) that states if liquor represents more than 10% or 20% of the business it will not be allowed, so that there is fairness and businesses who want to invest in west Fresno know what to expect; stated this was a difficult decision for him and questioned if any policy existed allowing a decision when statistics justify the issue at hand (with City Attorney Sanchez and Councilmember Baines responding); and commented further on the NIMBY issue.

Mr. Sanchez recommended, should Council deny this and due to the unique nature of the appeal and the evidentiary requirements, that the motion also include direction to his office to return with a resolution specifying from the record this date the detail to support the denial.

Councilmember Borgeas agreed with Councilmember Xiong that this was not an easy issue as there was a community wanting to protect the integrity of the community and a law abiding business; presented questions relative to city issuance of CUPs/ABC issuance of licenses/consideration of the over-saturation issue and if the planning commission should be empowered to consider the saturation issue with these types of CUPs (with Mr. Sanchez and Councilmember Baines responding); and spoke to the desire for businesses to thrive, the importance of businesses understanding that considerations will be brought into debates by the relevant entities, the numerous mini-marts in his district, it being dangerous to tell a business on an ad hoc basis that a saturation level will not be tolerated, it not being the fault of the business community to pursue opportunities unless they are told not to and his having to support the planning commission recommendation to approve the CUP on that basis only, and this being a wake-up call that something needs to be done to stop saturation.

Councilmember Baines stated many good points were made, he was also sensitive to NIMBY but this was an *only in my backyard* issue, and elaborated further on the issue, concerns, and the need to protect the community.

Mr. Sanchez advised Council also had the ability to *deny without prejudice* which would allow the applicant to return in less than a year with a proposal consistent with whatever policy is adopted, which was accepted by the motion-maker.

On motion of Councilmember Baines, seconded by Councilmember Brand, duly carried, RESOLVED, the appeal hereby upheld and the CUP denied without prejudice, and the City Attorney's Office directed to return with a resolution specifying from the record this date the detail to support the denial, by the following vote:

Ayes	:	Baines, Brand, Quintero, Xiong
Noes	:	Borgeas, Olivier
Absent	:	Westerlund

ADJOURNMENT

There being no further business to bring before the City Council, the hour of 6:50 p.m. having arrived and hearing no objection, President Olivier declared the meeting adjourned.

Approved on the ____29th____ day of ____MARCH____, 2012.

_____/s/____ ATTEST:_____/s/____
Clinton Olivier, Council President Yolanda Salazar, Assistant City Clerk